



IT IS ORDERED as set forth below:

Date: November 24, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In Re:	:	Chapter 13
	:	
Roy Douglas Willis and	:	Case No. 10-75584-MGD
Shirley Johnson Willis,	:	
	:	
Debtors.	:	Judge Diehl
	:	
Roy Douglas Willis and	:	
Shirley Johnson Willis,	:	
	:	
Movants,	:	
v.	:	
	:	Contested Matter
North Star Capital Acquisitions LLC,	:	
	:	
Respondent.	:	

ORDER OVERRULING DEBTOR'S OBJECTION TO CLAIM

Before the Court is an Objection to Claim ("Objection") filed by Roy Douglas Willis and Shirley Johnson Willis ("Debtors"). (Docket No. 25). The respondent is North Star Acquisitions,

LLC (“North Star” or “Respondent”). The matter came on for hearing October 6, 2010.¹ Michael Rethinger, counsel for Debtors, was present at the hearing. No response was filed and no appearance was made on behalf of Respondent. The Court heard argument by Debtors’ counsel. Debtors seek to disallow North Star’s claim on the basis that Respondent’s proof of claim fails to comply with Federal Rule of Bankruptcy Procedure 3001(c). Specifically, Debtors assert that North Star failed to attach the requisite writing in support of its claim, as provided by Rule 3001(c), and that the proof of claim fails to show that North Star is the proper party for the claim since there is insufficient documentation to demonstrate transfers from the original creditor. At the hearing, the Court overruled Debtor’s Objection and this Order memorializes the Court’s ruling. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and venue is proper.

I. FACTS

Debtors filed a voluntary petition for Chapter 13 bankruptcy on May 27, 2010. Debtors’ Schedule F lists Wells Fargo Financial Cards, 3201 N 4th Ave., Sioux Falls, SD 57104, as holding an unsecured nonpriority claim in the amount of \$6,437.00. This debt is not scheduled as disputed, contingent, or unliquidated. (Docket No. 1, Schedule F, page 39). Debtor also scheduled Zenith Acquisition, as collection account agent for Wells Fargo Financial, for notice purposes. (Docket No. 1, Schedule F, page 40). The Dillon Law Firm, PC is also scheduled for notice purposes as “attorney for North Star Capital Acquisition LLC in state court suit.” (Docket No. 1, Schedule F, page 39).

¹ Debtors’ Objections to Claims of Midland Credit Management, Inc. and CV Evergreen, LLC’s were also set for the October 6, 2010 hearing. (Docket Nos. 24, 26 & 27). CV Evergreen, LLC filed a response and Debtors’ counsel announced at the calendar call that he was withdrawing this particular objection. At the hearing, Debtors’ counsel orally announced that he would withdraw the two objections to Midland Credit Management, Inc. claims as well.

Debtors' Statement of Financial Affairs lists a pending State Court of Cobb County suit filed by North Star Capital Acquisition LLC v. Shirley L. Willis. (Docket No. 1, page 19).

On July 19, 2010, North Star Capital Acquisitions LLC, through its assignee Jefferson Capital Systems, LLC, filed a Proof of Claim. The Proof of Claim was in the sum of \$6,427.57. (Claim No. 5). This proof of claim lists the creditor as "North Star Capital Acquisitions LLC; Jefferson Capital Systems, LLC Assignee" and Shirley L. Willis as the debtor. The proof of claim indicates that the basis for the claim is credit card debt and that the Debtors may have filed or scheduled the account is Wells Fargo Financial. Two documents were attached to the Proof of Claim, an Account Statement Summary and a Waiver of Notice of Assignment of Claim. The Account Statement Summary lists basic information, including name, balance, last payment, note date, writeoff date, origination date, and amount. The Account Statement Summary also includes an Account Information section that lists the account owner as North Star Capital Acquisitions LLC and the account originated by Wells Fargo Financial. The Waiver and Notice of Assignment of Claim is a blanket transfer of accounts and lists Zenith Acquisition Corporation ("Zenith") as assignor and Jefferson Capital Systems, LLC as assignee. No account numbers are listed. The Waiver and Notice of Assignment of Claim also lists North Star Capital Corporation as a subsidiary.

Debtors' case was confirmed on October 7, 2010 and provides a 100% payment of allowed unsecured claims.

II. DISCUSSION

Debtors' Objection to North Star's claim is based on improper procedure under Rule 3001(c). Debtors do not contest the existence of these claims or the amount due and owing. Debtors' specifically object to the lack of documentation evidencing assignment of claims from Wells Fargo

Financial to North Star Capital Acquisitions LLC; Jefferson Capital Systems, LLC Assignee. The Court does not dispute that the supporting documentation is imperfect. However, Debtors' own sworn schedules and disclosure of debts coupled with no substantive objection do not provide the Court with a proper basis to disallow North Star's claim, even in the absence of opposition.

Rule 3001(a) of the Federal Rules of Bankruptcy Procedure provides for the form and content of a proof of claim and requires substantial conformation to the appropriate form. When a claim is based on a "writing," like a credit card agreement or any other contract, Rule 3001(c) provides that "the original or duplicate should be filed with the proof of claim." FED. R. BANKR. P. 3001(c) (continuing that if the writing has been lost or destroyed a statement of such circumstances shall be filed with the claim). If a proof of claim conforms to Rule 3001, subsection (f) states that such claim "shall constitute prima facie evidence of the validity of the claim." FED. R. BANKR. P. 3001(f).

Here, Debtors assert that North Star's failure to produce the writing or, alternatively, a statement regarding the destruction of the writing, provides an independent basis to disallow the claim. There is some disagreement among the courts regarding what type of writing complies with Rule 3001(c), especially within the context of credit card agreements and claims. *In re Irons*, 343 B.R. 32, 40 (Bankr. N.D.N.Y. 2006) (explaining that a summary may suffice but, upon request, a creditor is still required to produce documentation) (*citing Cluff v. eCast Settlement*, No. 2:04-CV-978, 2006 U.S. Dist. LEXIS 71904 (D. Utah Sept. 29, 2006) (stating that "it is not the underlying credit card agreement that creates the debt . . . it is the actual use of the credit card that creates the obligation to repay"); *In re Henry*, 311 B.R. 813, 817 (Bankr. W.D. Wash. 2004) (noting that debts resulting from credit cards rely on the credit card agreement as the writing); *In re Hughes*, 313 B.R. at 210; *In re Relford*, 323 B.R. 669, 673 (Bankr. S.D. Ind., 2004) (indicating that a claim

resulting from a credit card "is based on both the credit card agreement and proof of the credit card's actual use," and both should be included with a creditor's proof of claim).

A determination with respect to whether the summaries attached to North Star's claim sufficiently comply with Rule 3001(c)'s requirement, however, is not a dispositive factor in ruling on Debtors' Objection. Even if the attached documentation is insufficient under Rule 3001(c), and, therefore, the Claim loses its prima facie validity under Rule 3001(f), such a deficiency does not create a basis for disallowing the Claims. *Cluff v. eCast Settlement*, 2006 U.S. Dist. LEXIS 71904 at *13; *In re Burkett*, 329 B.R. 820, 832 (Bankr. S.D. Ohio 2005); *In re Shank*, 315 B.R. 799 (Bankr. N.D. Ga. 2004). "Insufficient documentation is not a basis to disallow a claim under § 502 of the Bankruptcy Code." *In re Moreno*, 341 B.R. 813, 814 (Bankr. S.D. Fla. 2006); *see also Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 n.12 (B.A.P. 1st Cir. 2009) (dicta).

Debtors also object on the basis that the documentation fails to identify North Star as the proper owner of the claim. Specifically, Debtors assert that there is no writing in support of a transfer from the original account held by Wells Fargo. Debtors argue that North Star should have the burden to produce documents in support of their ownership of the claim upon objection.

The Court agrees with Debtor that Rule 3001(c)'s writing requirement includes evidence of assignment when the claim is filed by an assignee. FED. R. BANKR. P. 3001(f). The Court also acknowledges that the attached documentation is imperfect. Creditors should rightfully be put to the test if their claims include unsubstantiated charges or inaccurate claims. However, Debtors' Objection is not based on the veracity of the assignment, only its noncompliance with Rule 3001(c). Debtors' technical objection alone can not disallow claims that are otherwise admittedly valid. *E.g., In re Lapansky*, 2006 WL 3859243 at *2 (Bankr. E.D. Pa. Oct. 31, 2006). "Should the Debtor

contest the validity or amount of the proof of claim pursuant to § 502(b), then the evidentiary effect of [the creditor's] purported failure to properly document its proof of claim will become relevant.”

In re Simms, 2007 WL 4468682 (Bankr. N.D. W.Va. Dec. 17, 2007).

Debtors' Schedule F lists all the parties at play as presented by North Star's proof of claim. Wells Fargo is listed as the account originator in the Account Summary and is scheduled by Debtors as having a claim in the amount of \$6,437.00. North Star's proof of claim is in the amount of \$6,427.57. Zenith is listed by Debtors as collection agent for Wells Fargo, and the proof of claim includes a Notice of Assignment with Zenith as the assignor. Debtors scheduled North Star's law firm that prosecuted the pending state court action. This pending action by North Star is also listed in Debtors' Statement of Financial Affairs. North Star is listed as a subsidiary on the Notice of Assignment. The proof of claim lists Debtor Shirley L. Willis as the debtor. Debtors' Statement of Financial Affairs lists Shirley L. Willis as the defendant in the pending law suit with North Star. Lastly, the proof of claim also notes that the claim may have been scheduled as Wells Fargo Financial. Debtors' own sworn statements taken together with North Star's proof of claim is sufficient for the Court to overrule the Objection. When the documentation is incomplete, the Court may use the bankruptcy record to provide indicia of claim's validity. *In re O'Brien*, 2010 WL 3894420 (Bankr. E.D. Pa. Oct. 1, 2010).

North Star's proof of claim is supported by the record. Therefore, the burden shifts to the objecting party. *See id.* at 11 (explaining that certain scenarios place the burden of production on the objecting party even when claimant has no benefit of Rule 3001(f)'s prima facie validity). “[W]hen a debtor objects to a creditor's proof of claim that does not conform with Rule 3001(c) by including copies of the documentation on which it is based, the bankruptcy court should resolve the

issues by reference to the usual burdens of proof associated with claims litigation. In doing so, the bankruptcy court may properly consider as admissions or evidence any information contained in debtor's bankruptcy schedules, and may also consider the creditor's failure to provide relevant documentation.” *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005). Further, while a creditor has the ultimate burden as to validity of the claim, Debtors, as the objecting parties, bear the burden of providing some evidence to rebut the claim going forward. *E.g., Cluff v. eCast Settlement*, 2006 U.S. Dist. LEXIS 71904 at *13. In this case where there are striking similarities between Debtors’ admissions and the proof of claim, it is also significant that no other claim with respect to this debt has been filed. The claim is sufficiently verified by Debtors’ schedules and correlates to North Star’s proof of claim.

Section 502(a) provides that a filed proof of claim is deemed allowed unless there is an objection. 11 U.S.C. § 502(a). Section 502(b) provides the grounds for which a claim may be disallowed. *Dove-Nation v. eCast Settlement Corp. (In re Dove-Nation)*, 318 B.R. 147, 153 (B.A.P. 8th Cir. 2004). Debtors’ Objection does not include any of enumerated basis in § 502(b). Instead, the sole basis for the Objection is noncompliance with Rule 3001(c), which, even absent Rule 3001(f)’s presumption of validity, Debtors’ Objection does not provide any ground to disallow Respondent’s claim. *Id.* at 151; *In re Moreno*, 341 B.R. at 817 (Bankr. M.D. Fla. 2006); *In re Irons*, 343 B.R. 32, 41 (Bankr. N.D.N.Y. 2006); *In re Burkett*, 329 B.R. 820, 832 (Bankr. S.D. Ohio 2005); *In re Shank*, 315 B.R. at 812 (holding that “an objection to a proof of claim based solely on the lack of attached documents provides no basis for disallowance of a claim, even if the claimant declines to respond to the objection.”).

The Court does not want to discourage zealous advocacy in the representation of debtors, but the procedural basis for Debtors' Objection is troubling to the Court given the sworn statements included in Debtors' Schedule F and Statement of Financial Affairs. While the proof of claim lacks exacting legal documents evidencing an assignment of the original Wells Fargo account, Debtors' own schedules include Zenith Acquisition, North Star's law firm in the state court action, and an acknowledgment of a pending suit with North Star as plaintiff. Procedural rules should neither trump Debtors' good faith requirement, § 1325(a)(3), nor counsel's judgment as guided by Rule 9011 of the Federal Rules of Bankruptcy Procedure. Regardless of whether Respondent benefitted from Rule 3001(f)'s presumption of validity in amount, Debtors' Objection provides no proper basis to warrant sustaining the Objection. Accordingly, it is hereby

ORDERED that Debtors' Objection to Claim held by North Star is hereby **OVERRULED**.

The Clerk's Office is directed to serve a copy of this Order upon Debtors, Debtors' counsel, Chapter 13 Trustee, and the party on the attached distribution list.

END OF DOCUMENT

Distribution List:

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